

BOARD OF ZONING APPEALS

MINUTES

6:30 PM

January 18, 2012

City Council Chambers

MEMBERS PRESENT: Bernie Bossio, Leanne Cardoso, George Papandreas, Tom Shamberger

MEMBERS ABSENT: None

STAFF: Chris Fletcher, AICP; Heather Dingman, AICP

- I. **CALL TO ORDER AND ROLL CALL:** Bossio called the meeting to order at 6:30 PM
- II. **2012 LEADERSHIP ELECTION:** Shamberger made a motion nominating Bernie Bossio to be Chair; seconded by Papandreas. Motion carried unanimously. Papandreas made a motion nominating Leanne Cardoso as Vice-Chair; seconded by Shamberger. Motion carried unanimously.
- III. **MATTERS OF BUSINESS:** Minutes from the December 21, 2011 hearing were approved as presented: Motion to approve by Papandreas; seconded by Shamberger. Motion carried unanimously, with Shaffer abstaining due to absence at the last meeting.
- IV. **OLD BUSINESS:**
 - A. **V11-46 / Andrew Smith / 426 Drummond Street:** Request by Andrew Smith, on behalf of Smith CPA for variance relief from Article 1367.08 (C) as it relates to minimum landscape buffer at 426 Drummond Street; Tax Map 6, Parcel 17; PRO, Professional, Residential, and Office District. MUST BE REMOVED FROM TABLE.

Bossio stated that the Planning Division received written request from Mr. Smith that this item remain tabled.

V. NEW BUSINESS

- A. **V11-47 / Andrew Smith / 426 Drummond Street:** Request by Andrew Smith, on behalf of Smith CPA for variance relief from Article 1341.07 (I) as it

relates to sidewalks 426 Drummond Street; Tax Map 6, Parcel 17; PRO, Professional, Residential, and Office District.

Bossio stated that the Planning Division received written from Mr. Smith that this item be tabled.

Shamberger made a motion to table request V-17; seconded by Papandreas. Motion carried unanimously.

- B. V12-01 / Kappa Sigma / 200 Belmar Avenue:** Request by Michael DeMoss of Commercial Builders, Inc. of West Virginia, on behalf of Kappa Sigma House Association, Inc. for variance relief from Article 1365 as it relates to minimum parking at 200 Belmar Avenue; Tax Map 26, Parcel 167; R-2, Single-and Two-Family Residential District.

Shamberger wanted to make a disclosure that 20 years ago he had served on the Sigma Ki House Corporation, whose property abuts this property. He does not feel he has a conflict of interest, but wanted to make it know for the record.

Bossio introduced the petitioner, Michael DeMoss, 49 Lone Pine Drive, Masontown, WV, and asked if he had any problem with Mr. Shamberger's disclosure. He stated that he did not.

Dingman read the staff report, stating that the petitioner seeks to renovate and expand the existing Kappa Sigma Fraternity House on Belmar Avenue. This renovation will not result in an increase in the residential occupancy of the building, but will add assembly area to the building. The applicant requests variance relief from the required minimum parking necessary to serve the new assembly area. Addendum A of this report illustrates the location of the subject property.

The proposed residential occupancy of the Kappa Sigma House will be 22 people, which has been reduced from the building's historic 26 person occupancy. The proposed renovations include an expansion to create an assembly area to be used by residents and guests. The proposed 1,585 square foot assembly expansion area has a maximum building occupancy of approximately 106 people. The applicant states that the assembly space will only be used for special occasions infrequently throughout the year and will be occupied rarely.

As a preexisting residential structure without parking, the interior renovation would not require the addition of any parking spaces. However, the expansion of the common assembly area creates a new parking demand on the site.

The Minimum Off-Street Parking Requirements of the City's Planning and Zoning Code Table 1365.04 requires that Fraternity or Sorority Houses have one space for each three persons based upon the approved maximum building occupancy. The intent of this parking requirement is to be applied to the residential portion of the building. Table 1365.04 requires that Charitable, Fraternal or Social Organizations provide one space for each four persons at maximum building capacity. The intent of this parking requirement is to be applied to the common area portion of the building.

Permitted Land Use	Minimum Parking Standard
Fraternity or Sorority House	1 space for each three persons based upon the approved maximum building occupancy
Charitable, Fraternal or Social Organization	1 space for each four persons at maximum capacity

Staff assumes that the 22 residents will occupy the assembly area during an event in which the space is filled to maximum occupancy. Following this reasoning, of the gross 106 maximum occupancy of the assembly area, 84 people ($106 - 22 = 84$) would be new net guests to the site for which there would be a parking demand.

Therefore, it is reasonable to assume that one parking space should be provided for each four guests, resulting in a total requirement of 21 parking spaces. Addendum B of this report provides a letter to the applicant articulating Staff's parking demand determination.

The petitioner's proposed site plan submitted with the variance petition illustrates 11 parking spaces. The 11 space parking lot accesses off of the rear yard of the property from Glendon Street, just off of the dead end of North High Street. The parking area will have a 20 foot drive aisle and "T" turnaround. The parking lot will have a dumpster and will be enclosed with a landscape screen. The parking area is lighted and has a walkway that connects to the existing public stair case leading from Glendon Street to Belmar Avenue.

The applicant has worked with Planning and Engineering Staff to accommodate as many parking spaces in the rear yard as possible, given the numerous complex site conditions. The parking lot can only be constructed in the rear yard, due to the location of the building. The rear yard steep slope terrain limits how many parking spaces can be constructed on the lawn.

Bossio introduced the petitioner again, Michael DeMoss, 49 Lone Pine Drive, Masontown, WV. Demoss told the Board members he would be happy to answer any technical questions. He further stated that this property has been empty for some time and has been the subject of vandalism. They are now ready to move forward to renovate the building, but the parking requirement is a problem.

Bossio opened the public hearing portion of the meeting, asking if anyone was present to speak in favor or opposition to the request. There being no comments either in favor or opposition, Bossio declared the public hearing portion closed.

Dingman read Staff recommendation, stating that the Board of Zoning Appeals must determine whether the proposed request meets the standard criteria for a variance by reaching a positive determination for *each* of the "Findings of Fact" submitted by the petitioner.

Addendum B of this report provides Staff recommended revisions to the petitioner's findings of fact (deleted matter struck through; new matter underlined).

Staff recommends that variance relief be granted for petition V12-01 as requested so that 11 parking spaces may be developed, with the following conditions:

1. That the petitioner shall incorporate, to the satisfaction of the Planning Division, all reasonable Technical Review Team recommendations in plans submitted with related building permit applications.
2. That the final Landscaping Plan and Lighting Plan must be submitted and approved as a part of the building permit review process and comply with related standards in Article 1367 and Article 1371 respectively unless variance relief is granted by the Board of Zoning Appeals.
3. The final dumpster location to be determined according to the satisfaction of the City Planning Division, Engineering Department, and Solid Waste Authority.

Papandreas made a motion to accept the Findings of Facts, with strike through and underline portions; Shamberger seconded. Motion carried unanimously.

The Finding of Facts included in this motion are as follows:

Finding of Fact #1 – There are exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

The property has such an elevation difference of approximately 30% from the front (Belmar Avenue) to the rear (Glendon Street). The only access to a potential parking area is from

Glendon Street with a 12% slope drive. According to the topography contours provided by the applicant, the rear yard elevation falls approximately 30 feet from the back of the building to the rear yard property line at North High Street and Glendon Street. The steep slope terrain limits the number of parking spaces that can be constructed in the rear yard.

Finding of Fact #2 – The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:

Kappa Sigma is one of several fraternities and sororities in the vicinity. The Kappa Sigma House, like other non-conforming fraternities and sororities, has never had parking. Furthermore, the Kappa Sigma House was condemned over 12 months ago and since remained vacant and boarded. The new renovations should be evaluated in terms of their new parking demand. The renovations reduce the residential bed count, but add a new parking demand for 1,585 square feet of assembly space. Many other fraternity and sororities have assembly spaces, and are similarly nonconforming because they do not provide adequate parking. The proposed new parking demand generated by the assembly space should be accommodated by additional parking. The steep slope terrain and limited site access reduces parking space development opportunity. The applicant has made every attempt to maximize the site for parking.

Finding of Fact #3 – The granting of this variance will not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

The applicant has provided eleven parking spaces on the site. Although the proposed parking lot layout does not meet the minimum 21 space requirement, it provides a considerable number of parking spaces to the Kappa Sigma House. The applicant states that the assembly space is intended to be used for special events; therefore, the parking spaces will only be required sporadically throughout the year. Staff assumes these parking spaces will be sufficient to meet the minimum demands of the property without inflicting harm on property or improvements in the vicinity.

Finding of Fact #4 – The granting of this variance will not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:

The current status of the site is an unoccupied building. The Kappa Sigma House is similar to surrounding properties. The proposed renovations will not alter the land use characteristics of the area. The proposed new parking demand generated by the assembly space should be accommodated by additional parking, and although the proposed parking lot requires a 10 space variance, the development will be consistent with other nonconforming properties in the area.

Shamberger made a motion to approve request V12-01; seconded by Papandreas. Motion carried unanimously.

- C. CU12-01 / Megan Wright / 416 Lawnview Drive:** Request by Megan Wright for conditional use approval for a “Class II Home Occupation” at 415 Lawnview Drive; Tax Map 53, Parcels 24 and 25; R-1, Single-Family Residential District.

Dingman read the Staff report, stating that Megan Wright seeks to open a physical therapy and fitness training office at her home at 415 Lawnview Drive. Mrs. Wright is an athlete and a licensed physical therapist at Ruby Memorial Hospital and will provide her services to fellow athletes at her home. All clients will be by appointment only and will be on a limited basis.

According to the, Table 1331.05.01 “Permitted Land Uses” of the Planning and Zoning Code, a “Class 2 Home Occupation” requires conditional use approval in the R-1 District.

The following points highlight the information provided in the petitioner’s application:

- The proposed hours of operation for the home occupation are Monday thru Sunday from 8 A.M. to 8 P.M.
- The average number of clients at one time is estimated to be one (1).
- The average number of clients per day is estimated to be two (2).
- The average number of clients per week is estimated to be four (4).
- The applicant states that approximately 60% of clients drive. While, the other 40% walk or take public transportation.
- No delivery trucks are anticipated to visit the site on a regular basis.
- The home’s driveway is approximately 19’ wide and 22’ deep. This driveway can accommodate two cars parked side by side.
- Off-street parking available at the subject single-family house. Site visit findings that surrounding neighbors appear to park on the street, therefore on street parking is limited.

Addendum A of this report illustrates the location of the site and photograph of the single-family dwelling.

Planning Staff has received two letters of opposition to the request, both are attached hereto.

Bossio introduced the applicant, Megan Wright, 415 Lawnview Drive. Wright stated one correction to the Staff report, she is a licensed physical therapist and not a student. She further stated that her purpose for doing this is that she is currently training for the London Olympics and has participated in past Olympics. Her goal is to help her fellow athletes deal with injuries. She stated the average number of clients per day that she would see would be 4. They have a one-car garage and a driveway to fit 2 cars. Many of them would ride bicycles. She will only see one person at a time.

Cardoso asked a few questions to clarify the parking situation and Ms. Wright reiterated that there should only be one car at a time.

Bossio opened the public hearing portion of the meeting, asking if anyone was present to speak in favor or opposition to the request. There being no comments either in favor or opposition, Bossio declared the public hearing portion closed.

Dingman read Staff recommendation, stating that the Board must determine whether the proposed request meets the standard criteria for a conditional use by reaching a positive determination for *each* of the "Findings of Fact" submitted by the applicant. Staff recommends the following revisions to the petitioner's findings of fact.

Addendum B of this report provides Staff recommended revisions to the petitioner's findings of fact (deleted matter struck through; new matter underlined).

Staff recommends approval of the requested home occupation for a physical therapy and fitness office at the requested location, subject to the following conditions included:

1. The proposed physical therapy home occupation must not produce detectable fumes, odors, dust, heat, noise, vibration, glare, electro-magnetic field, electrical interference, or other effects outside the dwelling, including transmittal through vertical or horizontal party walls.
2. The proposed physical therapy home occupation shall not require fixed installation of equipment or machinery that substantially changes the residential character of the dwelling.
3. The proposed physical therapy home occupation may not occupy more than twenty-five (25) percent of the floor area of the principal structure, and may not require internal or external alterations or construction features not customary to a residential dwelling.
4. The proposed physical therapy home occupation shall be conducted entirely within the footprint of the existing single-family dwelling. No home occupation

shall be conducted outdoors or in any accessory building or garage, except that parking of a vehicle used in conducting the business and/or simple storage of materials or goods used in association with the business may be permitted in such buildings.

5. The proposed physical therapy home occupation may have no more than one vehicle with business identification, and shall have no vehicle with greater than one (1.0) ton capacity and shall not have any trailer.
6. Except as required by State law, there shall be no exterior indication of the proposed massage home occupation, no exterior signs, nor any other on-site advertising visible from the exterior.
7. The proposed physical therapy home occupation shall not involve on-site employment of persons not residing in the dwelling.
8. The proposed physical therapy home occupation shall be registered as a business with the City of Morgantown Finance Office and shall pay applicable business and occupation taxes.
9. There will not be merchandise delivery and/or pick-ups to and from the premises that are associated with the home occupation, and that utilize a commercial delivery service or the United States Postal Service.
10. Retail sales shall not occur nor services provided on the premises on a regular basis or in substantial volume, such that customer visitation to the premises is deemed to be unreasonable.
11. That the conditional use approval granted herein is specific to the petitioner and may not be transferred without first obtaining approval by the Board of Zoning Appeals.
12. If the holder of subject physical therapy home occupation permit wishes to make changes in the conduct of the business that departs from the description in the application or from any other conditions or restrictions imposed by the Board of Zoning Appeals, the holder must obtain prior permission of the Board of Zoning Appeals.

Papandreas asked if the questions submitted by Ms. Spencer were addressed. Bossio asked Dingman to read the letter so the Board could respond to the questions right then.

Dingman read the letter from Lynn Spencer, 420 Lawnview Drive, who asked two questions:

- 1) If granted conditional use, if problems arise with this home occupation, could she petition the City to revise or amend this approval?

- 2) When the home is sold, will the Home Occupation conditional use still exist for the next owner?

Dingman stated that the answer to the first question is that the Ordinance provides that if there is a problem with or any factors are deviated from the conditions of this conditional use, any neighbor has the right to come before the Board and challenge it.

Dingman stated that in regards to the second answer that the conditional use approval is granted only to this applicant.

Bossio read two other items of correspondence: the first from Donald Nordstrom, 428 Lawnview Drive who had a question involving parking; the second from Shirley Curry, 421 Lawnview Drive, who simply stated she was not in favor of this request being granted.

Papandreas made a motion to accept the Findings of Facts as presented; seconded by Shamberger. Motion carried unanimously.

The Findings of Fact included in this motion are as follows:

Finding of Fact #1 – The home occupation will be compatible with residential uses of the dwelling, in that:

According to the petitioner, the home will remain a home. The therapy room is in the basement adjacent to the exercise area.

Finding of Fact #2 – The home occupation will not change the residential character of the dwelling, in that:

There will be no changes to the home. Our home is primarily my husband and my residence. We intend to raise our family here. This occupation will not affect my neighbors. The clients will be athletes. Clients mostly make appointments prior (no walk-ins).

Finding of Fact #3 – The home occupation will not detract from the residential character of the neighborhood, in that:

It will not change. There will be no change to the exterior of the home. There will be no increase number of cars. The neighborhood will not notice a difference. The type of home-based business is such that advertising should not be necessary so that the existing residential character in the immediate area will be maintained. There is no new construction, no structural alterations or additions are necessary.

Finding of Fact #4 – Congestion in the streets will not be increased, in that:

Clients will be seen one at a time for 60 minutes, scheduled with 30 minutes breaks between. They will park in my driveway. Although most clients will travel by car, the applicant states that many will come by foot or by bus. Clients will be seen by appointment only.

Shaffer made a motion to approve request CU12-01 with the conditions set forth by staff; seconded by Papandreas. Motion carried unanimously.

VI. OTHER BUSINESS:

A. Public Comments: None

B. Staff Comments: Dingman announced the upcoming public meetings concerning the Comprehensive Plan and encouraged participation.

VII. ADJOURNMENT: 7:15 PM

MINUTES APPROVED:

February 15, 2012



BOARD SECRETARY:

Heather Whitmore Dingman, AICP